IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

CWP No. 527 of 2005

Date of Decision: 11.7.2007.

Raj Kumar … Petitioner.

Versus.

Punjab National Bank & anr. . Respondents.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.

The Hon'ble Mr. Justice Sanjay Karol, Judge.

Whether approved for reporting?

For the Petitioner: Mr. R.K.Bawa, Sr. Advocate with
Mr. Inderjit Singh Narwal, Advocate.

For the Respondents: Mr. Anup Rattan, Advocate for
Respondents 1 & 2..

Deepak Gupta, J. (Oral).

By means of this writ petition, the petitioner has prayed that the orders of the respondents refusing to grant compassionate appointment to him be set aside and the respondents be directed to grant compassionate appointment to him.

The facts shortly stated are that the petitioner's father was employed as Cashier with the respondent-Bank. He died on 26.2.1999 while in service. Thereafter, wife of the deceased i.e. mother of the petitioner made a nomination in favour of the petitioner for grant of employment on compassionate grounds with

the respondent- Bank. The respondent- Bank vide its letter dated 16.3.2001 turned down the request for compassionate appointment on the ground that keeping in view the financial condition of the family and other facts of the case, the same was not covered under the terms of the policy. Thereafter, the petitioner and his mother made a number of representations and the matter was again referred to the Head Office of the respondent – Bank and finally on 23.6.2004 it was conveyed to the petitioner that the Head Office had reconsidered the case and keeping in view the financial condition of the family, no case was made out for grant of compassionate appointment. The respondent – Bank while taking this decision also noted that the family of the deceased had received Rs.2,61,000/-by way of terminal dues. It was also noticed that the family of the deceased is residing in their own accommodation and family pension of Rs. 4671/- was being received from the respondent – Bank. Thereafter the present petition was filed.

Shri R.K.Bawa learned senior counsel for the petitioner has contended that the case of the petitioner stands on a different footing since his brother is virtually bed ridden and one sister is studying in CMC, Ludhiana and there are huge expense to be borne on this count.

The respondents in their reply have submitted that they have considered the case of the petitioner as per the policy as it stood on the day when the case of the petitioner was considered and it was found that his case is not covered under the terms of the

policy. Along with the reply, the petitioner has attached the scheme for compassionate appointment.

In **Umesh Kumar Nagpal v. State of Haryana**, JT 1994 (3) SC 525, the apex Court held as follows:-

> " As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or re-tax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interest of justice and to meet certain contingencies. One such exception is in favour of the dependents of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependents of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post held by the deceased.".

The Supreme Court in **Union Bank of India and others v. M.T.Latheesh,** (2006) 7 Supreme Court Cases 350, while setting aside

the judgment of the Division Bench of the High Court of Kerala, held as follows:-

> " 16. The Division Bench, in our opinion, has failed to notice the fact that the fresh employment with the Bank has reduced considerably and the grant of employment on compassionate grounds to all the cases shall shut the door for employment to the ever growing population of unemployed youth, more particularly when the industry is being asked to reduce the employees by offering retirement schemes. The Division Bench has failed to appreciate the fact that the Scheme for compassionate employment is very elaborate and it provides for determination of the financial conditions of the family on various factors and takes into consideration the income of the family from all sources. The High Court also has not noticed that the impugned judgment shall open a Pandora's box of litigation and all the persons who have been denied any such employment shall take recourse to the similar litigation……."

The apex Court further went on to hold as follows:-

> "37. It is settled law that the specially constituted authorities in the rules or regulations like the competent authority in this case are better equipped to decide the cases on facts of the case and their objective finding arrived on the appreciation of the full facts should not be disturbed. Learned Single Judge and the Division Bench by directing appointment has fettered the discretion of the appointing and selecting authorities. The Bank had considered the application of the respondent in terms of the statutory scheme framed by the Bank for such appointment. After that even though the Bank found the respondent ineligible for appointment to its service, the High Court has found him eligible and has ordered his appointment. This is

against the law laid down by this Court. It is settled law that the principles regarding compassionate appointment that compassionate appointment being an exception to the general rule the appointment has to be exercised only in warranting situations and circumstances existing in granting appointment and guiding factors should be financial condition of the family. The respondent is not entitled to claim relief under the new Scheme because the financial status of the family is much above the criterion fixed in the new Scheme."

The apex Court in **State Bank of India & Anr. V. Somvir Singh**, JT 2007 (3) SC 398,held as follows:-

"11. The scheme for appointment of dependents of deceased employee on compassionate grounds framed by the appellant- Bank *inter alia* provides that in making assessment of the financial condition of the family which is an important criterion for determining the eligibility to compassionate appointment, the following factors are required to be taken into consideration:

(a) Family pension
(b) Gratuity amount received
(c) Employee's/Employer's contribution to Provident Fund
(d) Any compensation paid by the Bank or its Welfare Fund
(e) Proceeds of LIC Policy and other investments of the deceased employee
(f) Income for family from other sources
(g) Income of other family members from employment or otherwise
(h) Size of the family and liabilities, if any.

12. The Competent Authority while considering the application had taken into consideration each one of those factors and accordingly found that the dependents of employee who died in harness are not

> in penury and without any means of livelihood. The Authority did not commit any error in taking the terminal benefits and the investments and the monthly family income including the family pension paid by the bank into consideration for the purposes of deciding as to whether the family of late Zile Singh had been left in penury or without any means of livelihood. The scheme framed by the appellant-Bank in fact mandates the Authority to take those factors into consideration. The Authority also did not commit any error in taking into consideration the income of the family from other sources viz. the agricultural land."

In the present case, the policy guidelines are virtually identical. The object of the Scheme is in the following terms:-

> " The object of the Scheme is to consider compassionate employment to the dependent of an employee dying in harness leaving his family without any means of livelihood. Mere death of an employee in harness would not however, entitle his dependents to such employment. Bank will consider compassionate employment only in such cases where it is satisfied that the financial condition of the family of the deceased employee is such that but for the provision of employment to his dependent, the family will not be able to meet the crisis it faces at the time of death of the said employee."

The financial conditions have to be adopted as per criteria in Clause 11 which is identical to the criteria in State Bank of India's case *supra*.

In the present case also, the respondents have considered all the relevant criteria and have found that the petitioner is not

covered under the scheme for grant of compassionate appointment. Compassionate appointment cannot be made de hors the scheme. The income of the family from all sources is required to be taken into consideration according to the scheme. The petitioner in the present case has received the following dues:-

i)	Net terminal dues paid	Rs. 1,91,990.00
ii)	LIC	Rs. 53,000.00
iii)	NSCs	Rs. 3,000. 00

In addition thereto, the petitioner is getting family pension of Rs.4671/- per month. The respondent – Bank has also valued the house at Rs. 1,50,000/- and the agricultural land at the same value. Keeping in view all the facts, no error can be found in the decision of the respondent- Bank that the case of the petitioner did not fall within the ambit of the Scheme.

In view of the above discussion, the writ petition is without any merit and is, accordingly, dismissed.

(Deepak Gupta), J.

July 11,2007. (Sanjay Karol),

s.